



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-98-026-52465

Office: Vermont Service Center

Date: JAN 10 2000

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



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prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

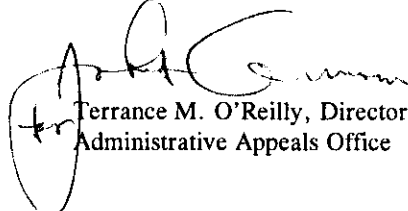
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), in order to employ him as a permanent full-time "Sunday school teacher." The director denied the petition finding that the petitioner failed to establish that the position offered constituted a qualifying religious occupation. The director also found that the petitioner failed to establish its ability to pay the proffered annual salary of \$18,000.

On appeal, counsel for the petitioner submitted a letter from the pastor of the church and additional documentation.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner is a church recognized by the Internal Revenue

Service as a tax exempt religious organization. The beneficiary is described as a thirty-five-year-old married male native and citizen of Korea who last entered the United States on December 4, 1989, as a student. The record indicates that the beneficiary has continued to reside in the United States beyond his authorized stay in an unlawful status. The petitioner declared on the petition form that the beneficiary has never been employed in the United States without authorization, but failed to submit proof of his means of financial support.

At issue in the director's decision is whether the position offered constitutes a qualifying religious occupation.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

In order to establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The regulatory definition is framed in broad terms. It states only that the position must be related to a traditional religious function and provides a brief list of examples. The term "traditional religious function" is not defined. This serves to accommodate all religious organizations and their respective traditions of various vocations and occupations. In making a determination regarding special immigrant classification, the Service must distinguish between activities that are traditionally performed by volunteer members of the congregation, as part of the practice of their religious beliefs, and activities that are traditionally performed by specialized lay personnel, as a salaried occupation.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In the job offer letter, the duties of the position were described as teaching the Bible, hymns, and Korean language and culture. The director determined that there was no evidence that the position required specific religious training and had not been shown to be qualifying for special immigrant classification.

On appeal, the church official asserted, in pertinent part, that the position requires the completion of Bible studies and three months of experience.

On review, the petitioner has not described the size of its congregation or the nature of its "Sunday school" program stated to operate for forty hours per week. Nor has the petitioner submitted evidence that it has ever employed lay persons as religious workers in permanent salaried positions. Merely asserting that an alien will be employed under a given job title is insufficient to satisfy the burden of proof. In the absence of a comprehensive description of the position offered, supported by pertinent documentation, the Service cannot conclude that the proposed position of full-time Sunday school teacher is qualifying for special immigrant classification.

In addition, duties such as Korean language and culture instruction, even if sponsored by a church, are considered secular duties not qualifying as a religious occupation. The apportionment of proposed duties between religious and secular was not specified. For this reason as well, it must be concluded that the petitioner has failed to adequately establish that the proposed position is a qualifying religious occupation for the purpose of special immigrant classification.

The next issue in the director's decision is the prospective employer's ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

In the job offer letter, the petitioner quoted the proposed salary as both \$18,000 and \$15,600 per year. The actual amount was not clarified. In support of its ability to pay a qualifying salary, the petitioner relied on financial summaries from its accountant.

These documents do not satisfy the regulatory requirement. The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements. Therefore, the director's objection on this issue has not been overcome.

Although not raised by the center director, the petition is deficient on additional grounds. The petitioner failed to establish that the beneficiary satisfied the requirement of having had at least two years of continuous work experience in a religious occupation. It is further noted that the petitioner failed to establish that the beneficiary had had two years of membership in its denomination as required by the statute. As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.